HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C. V. NAGARJUNA REDDY

Writ Petition No.3155 of 2006

Between:

K. Satya Rao

… Petitioner

And

The Assistant Commissioner of Central Excise
and Customs (Tech.) HQRS, Visakhapatnam-II,
Commissonerate, Central Excise Building,
Port Area, Visakhapatnam and another.

… Respondents

:: ORDER ::

Counsel for the Petitioner: Ms.M. Vidyavathi

Counsel for Respondents: Shri A. Rajasekhar Reddy,
Assistant Solicitor
General of India.

November 03, 2006

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Per G.S. Singhvi, CJ

In this petition, petitioner, K.Satya Rao (he was substituted as petitioner in place of M/s.Portlinks by an order passed today in WPMP.No.29052 of 2006) has prayed for quashing communication dated 23-1-2006, by which Commissioner of Central Excise and Customs, Visakhapatnam-II (respondent No.2) rejected the prayer made by M/s.Portlinks of whose the petitioner is an agent for conversion of temporary licence into regular one under the Customs House Agents Licensing Regulations, 2004 (hereinafter described as 'the New Regulations'). He has further prayed for issue of a mandamus to respondent No.2 to convert temporary licence No.TL.02/2003 into a regular licence.

The aforementioned prayer of the petitioner is founded on the assertion that he has passed the examination conducted under the Customs House Agents Licensing Regulations, 1984 (hereinafter described as 'the Old Regulations'); that the competent authority had granted temporary licence No. TL.02/2003 dated 3-10-2003 under the old Regulations for a period of one year; that the tenure of that licence was extended from time to time; that representation dated 25-10-2005 made by M/s.Portlinks for grant of regular licence was rejected by respondent No.2 without giving opportunity of hearing and without assigning cogent reasons and that the decision of respondent No.2 is based on a wholly erroneous interpretation of the New Regulations. According to the petitioner, he is not required to again pass the examination for the purpose of grant of regular licence and/or conversion of the

temporary licence into regular one under the New Regulations. It is also the petitioner's case that the clarification issued by the Central Board of Excise and Customs (for short, 'the Board') vide Circular No.42/2004-CUS dated 10-6-2004 is not applicable to his case because he has already passed the required examination under the Old Regulations.

The case set up by the respondents is that temporary custom house agent licence was granted to M/s.Portlinks under Regulation 8 of the Old Regulations for a period of one year and the same was extended up to 22-2-2006; that in terms of Regulation 8 of the New Regulations, a person holding temporary licence can pass examination within a period of two years; that the petitioner's request for conversion of temporary licence into regular one was rejected because he has not passed the required examination prescribed under Regulation 8 of the New Regulations and that there is no provision under the New Regulations for issue of temporary licence.

Ms.M.Vidyavathi argued that the reason assigned by respondent No.2 for refusing to convert the temporary licence of the petitioner into regular one is erroneous and the decision contained in communication dated 23-1-2006 is liable to be quashed because the petitioner has already passed the required examination under the Old Regulations. Learned counsel further argued that the scheme of the New Regulations do not require the agent of the temporary licensee, who has already passed the examination prescribed under the Old Regulations, to again pass examination under the New Regulations as a condition precedent to the conversion of temporary licence into regular one and, therefore, the insistence of respondent No.2 that the petitioner

should pass examination under the New Regulations is liable to be nullified. Ms.Vidyavathi emphasized that even though the New Regulations do not envisage grant of a temporary licence, conversion of the temporary licence granted under the Old Regulations is not prohibited and respondent No.2 gravely erred by refusing to entertain the application made on behalf of M/s.Portlinks.

Shri A. Rajasekhar Reddy strongly relied on the clarification contained in the Board's circular dated 10-6-2004 and argued that M/s.Portlinks is not entitled to regular licence because its agent i.e. the petitioner has not passed examination in terms of Regulation 8 (5) of the New Regulations. Shri Reddy emphasized that the New Regulations do not contain provision for grant of temporary licence, as was contained in the Old Regulations and argued that the temporary licence holder cannot seek a direction for grant of regular licence without fulfilling the requirement specified in Regulation 8 (5) of the New Regulations.

We have thoughtfully considered the respective arguments. The expression 'Custom House Agent' as defined in Regulation 2 (c) of the Old as well as New Regulations means 'a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station.' Regulation 4 of both the Regulations envisage that Commissioner of Customs may invite applications for the grant of such number of licences as assessed by him to act as Custom House Agents. Regulation 5 of both the Regulations provide for making of applications. Regulation 6 of both the Regulations specify the conditions to be fulfilled for grant of licence.

Regulation 8 of the Old Regulations contained provision for grant of temporary licence, Regulation 9 contained provision for examination of the applicant and Regulation 10 provided for grant of regular licence. Regulation 8 of the New Regulations enumerates the requirement of passing examination and Regulation 9 provide for grant of licence. Regulations 6, 8(1), 9 and 10(1) of the Old Regulations and Regulations 6, 8 and 9 (1) of the New Regulations, which have bearing on the decision of this petition, read as under:

Old Regulations:

6. Conditions to be fulfilled by the applicant –

The applicant or the person referred to in clause (b) of sub-regulations (2) and (3) of Regulation 5 as the case may be, shall prove to the satisfaction of the [Commissioner] that:

a) the applicant is a graduate from a recognised University and is an employee of a licensee and that he possesses a permanent pass ii Form G prescribed under regulation 20 and has the experience of work relating to clearance of goods through the Customs, for a period of no less than three years in the capacity of such a passholder:

Provided that the Commissioner may relax the possession of permanent pass in Form G to one year for reasons to be recorded in writing.

(b) the applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner evidencing possession of assets of the value of not less than

Rs.1 lakh in the case of applicants for the grant of licence in respect of any one of the Customs Stations at Bombay, Calcutta, Madras, Cochin, Kandia, Goa, Mangalore, Tuticorin or Visakhapatnam and not less than Rs. 50,000/- in the case of each of the other Customs Stations, situated at places other than those specified-above:

Provided that in cases where a Commissioner's

jurisdiction extends to more than one Customs Station, the Commissioner may issue one licence for all the Stations or more than one such Station to be specified in the licence, waiving the need for separate compliance of the provisions of clauses (a) and (b) above for such additional Customs Stations. The Commissioner may also waive the need for separate compliance of the requirement of Regulation 11 in such cases:

Provided further that in places where there is more than one Commissioner exercising jurisdiction over different Customs Stations and Custom House Agents licensed under the Custom House Agents (Licensing) Regulations, 1965 have been operating in the said Customs Stations on the basis of one licence, it shall be open to such Agents to obtain a temporary licence under Regulation from the Commissioner, other than the one who has issued them the existing licence, without being required to comply with the requirements of Regulation 6 in regard to financial viability or the requirements as to fresh deposit in terms of Regulation 11.

8. Grant of temporary licence -

(1) Any applicant whose application is received within the last date specified in Regulation 4 and who satisfies the requirements of Regulations 5 and regulation 6, shall be permitted to operate as Custom House Agent at the Customs Station for which the application is made initially for the period of one year against temporary licence granted by the Commissioner in this regard in Form B.

Provided that when evidence is produced to the Commissioner that the applicant has already availed of two chances for qualifying in the written or oral examination prescribed in these regulations and would like to avail of the third chance as soon as the next examination is held in terms of Regulation 9 and that the applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year's working, the Commissioner may extend the aforesaid period of one year for which the temporary licence has been granted by another six months or such further period not exceeding one

year to enable the applicant to avail of the third chance for qualifying in the examination in terms of Regulation 9. While granting such extension, the Commissioner of Customs shall satisfy himself that the requirements of Regulations 10(1)(a) and 10(1)(b) had been fully met by the applicant.

9. Examination of the applicant -

(1) The holder of a temporary licence in the case of an individual and the person or persons who will be actually engaged in the work of clearance of goods through customs on behalf of the firm or company holding a temporary licence, as the case may be, shall be required to qualify in examination, at the earliest opportunity. Such person or persons shall be eligible to appear in the examination as soon as a temporary licence is granted and shall be permitted to avail of three chances within a period of 2 years from the date of issue of the temporary licence on payment of

prescribed examination fee of Rs. 500/- for each examination.

(2) The examination referred to in sub-regulation (1) shall include a written and oral examination and will be conducted twice every year. Each applicant would be permitted to avail of a maximum of three chances to qualify in the said examination but all such chances should be availed of within a maximum period of
2 years from the date of grant of temporary licence.

Explanation: A person who qualifies in the written examination, but fails in the oral test linked to it, shall be treated as having failed in that chance; but he will not be required to appear in the written examination in the subsequent chances.

(3) The examination may include questions on the following:-

(a) preparation of various kinds of bills of entry and shipping bills;
(b) arrival entry and clearance of vessels;
(c) tariff classification and rates of duty;
(d) determination of value for assessment;
(e) conversion of currency;
(f) nature and description of documents to be filed with various kinds of bills of entry and shipping bills;
(g) procedure for assessment and payment of duty;
(h) examination of merchandise at the Customs Stations;
(i) provisions of the Trade and Merchandise Marks Act, 1958;
(j) prohibitions on import and export;
(k) bonding procedure and clearance from bond;
(1) re-importation and conditions for free re-entry;
(m) drawback;
(n) offences under the Act;
(o) the provisions of allied Acts including Imports and Exports (Control) Act, 1947 (18 of 1947), Foreign Exchange Regulation Act, 1973 (46 of 1973), Explosives Act, 1884 (4 of 1884), Arms Act, 1959 (54 of 1959), Opium Act, 1878 (1 of 1878), Drugs and Cosmetics Act, 1940 (23 of 1940), Destructive Insects and Pests Act, 1914 (2 of 1914), Dangerous Drugs Act, 1930 (2 of 1930) insofar as they are relevant to the clearance of goods through customs;
(p) procedure in the matter of refund of duty paid, appeals and revision petitions under the Act.

(4) The Commissioner shall also satisfy himself whether the licensee in Form B, See Form 48 in Part 5, if he is an individual, possesses, or in the case of a firm or company, the persons who will be actually engaged in the work relating to clearance of goods through customs on behalf of that firm or company, possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in the case of persons deputed to work exclusively in the docks, knowledge of English will not be compulsory. Knowledge of Hindi will be considered as an additional or desirable qualification.

(5) The holders of a regular licence under regulation 10 may authorise one of their employees or partners or directors, to appear for the examination referred to in sub-regulation (1), on behalf of such holders of regular licence in addition to the person of their agency who has passed the examination referred to in sub-regulation (1).

10. Grant of regular licence -

(1) The Commissioner shall, on receipt of an application in Form C, grant a regular licence in Form D on payment of a fee of Rs. 5000/- to such holder of a temporary licence who qualifies in an examination referred to in Regulation 9 and whose performance is found to be satisfactory with reference, inter alia, to the following:-

(a) quantity or value of cargo cleared by such licensee conforming to norms as may be prescribed by the Commissioner;

(b) absence of instances of delay either in the clearance of goods or in the payment of duty for any reason attributable to such licensee and any complaints of misconduct including non-compliance of any of the obligations specified in Regulation 14.

New Regulations:

"6. Conditions to be fulfilled by the applicant:

The applicant referred to in clause (b) of sub-regulations (2) and (3) of Regulation 5, as the case may be, or a person who has passed the examination referred to in Regulation 8, shall prove to the satisfaction of the Commissioner of Customs, that –

a) the applicant, or his authorized employee, is a graduate from a recognized University and possesses a professional

degree viz. C.A./M.B.A./LL.B/Diploma in Customs Clearance work from any Institute or University regognised by the Government with a working knowledge of computers and customs procedures, or is a graduate having at least three years experience in transacting Custom House Agent work as a G-Card holder, or a person who has passed the examination referred to in Regulation 8, or is a retired Group 'A' officer from the Indian Customs and Central Excise Service (IC&CES) having a minimum of ten years experience in Group 'A'.

b) the applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner of Customs evidencing possession of assets of value of not less than Rs.2 lakhs;

c) the applicant is a citizen of India.

8. Examination of the applicant:

1) Any applicant whose application is received within the last date specified in the notice or publication, as the case may be, referred to in Regulation 4 and who satisfies the requirements of Regulations 5 and 6, shall be required to appear for the written as well as oral examination conducted by the Director General of Inspection at specified centers and specified dates, twice every year, for which intimation shall be sent individually in advance before the date of examination.

Provided that an applicant who has already passed the examination referred to in Regulation 8 will not be required to appear for any further examination.

2) The applicants declared successful in written examination shall be called for oral examination.

3) It shall be necessary for the applicant to clear written as well as oral examinations separately. An applicant who clears the written examination but fails in the oral examination linked to it, shall have to clear the oral

examination within two years of the related written examination irrespective of the number of chances, and if he fails to do so, he shall be treated as having failed in the examination.

4) An applicant shall be allowed a maximum period of seven years within which he shall pass both the written and oral examinations. No further extension of time shall be granted.

5) Notwithstanding anything contained in sub-regulation (4), any person who holds a temporary licence granted under regulation 8 of the Customs House Agents Licencing Regulations, 1984, shall be allowed to pass the examination within a period of two years from the date of commencement of these regulations.

6) The examination may include questions on the following:

a) preparation of various kinds of bills of entry and shipping bills;

b) arrival entry and clearance of vessels;

c) tariff classification and rates of duty;

d) determination of value for assessment;

e) conversion of currency;

f) nature and description of documents to be filed with various kinds of bills of entry and shipping bills;

g) procedure for assessment and payment of duty;

h) examination of merchandise at the Customs Stations;

i) provisions of the Trade and Merchandise Marks Act, 1958 (43 of 1958), the Patents Act, 1970 (39 of 1970) and the Copy Rights Act, 1957 (14 of 1957).

j) prohibitions on import and export;

k) bonding procedure and clearance from bond;

l) re-importation and conditions for free re-entry;

m) drawback and export promotion schemes;

n) offences under the Act;

o) the provisions of allied Acts including the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), the Central Excise Act, 1944 (1 of 1944), Foreign Exchange Management Act, 2000 (42 of 1999), the Indian Explosives Act, 1884 (4 of 1884), the Arms Act, 1959 (54 of 1959), the Narcotic Drugs and Psychotropic Substances Act, the Drugs and Cosmetics Act, 1940 (23 of 1940), Destructive Insects and Pests Act, 1914 (2 of 1914), the Dangerous Drugs Act, 1930 (2 of 1930), insofar as they are relevant to the clearance of goods through customs;

p) provisions of the Prevention of Corruption Act, 1988 (49 of 1988);

p) procedure in the matter of refund of duty paid, appeals and revision petitions under the Act;

q) On-line filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise Electronic Commerce/Elec- tronic Data interchange Gateway (ICEGATE) and Indian Customs Electronic Data Interchange Systems (ICES).

7) The Commissioner of Customs shall also satisfy himself whether the applicant, if he is an individual, possesses, or in the case of a firm or company, the persons who shall be actually engaged in the work relating to clearance of goods through customs on behalf of that firm or company, possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in the case of persons deputed to work exclusively in the docks, knowledge of English shall not be compulsory. Knowledge of Hindi shall be considered as an additional or desirable qualification.

8) The holders of a licence under Regulation 9 may authorize any one of more of their employees or partners or directors to appear for the examination referred to in sub-

regulation (1) on behalf of such holders of licence, in addition to the person of their agency who has passed the examination referred to in sub-regulation (1).

9. Grant of Licence:

1) The Commissioner of Customs shall on payment of a fee of Rs.5,000/- grant a licence in Form B to an applicant who has passed the examination referred to in Regulation 8.

A comparative study of the two sets of Regulations show that the Old Regulations contemplated grant of temporary licence without requiring the applicant to pass any

Examination, but regular licence could be granted to the applicant only after qualifying the examination referred to in Regulation 9. The New Regulations do not provide for grant of temporary licence. Regulation 9(1) thereof provides for grant of only one type of licence for which application can be made by a person who has passed examination referred to in Regulation 8. Clause (5) of Regulation 8 begins with a non-obstante clause and lays down that any person holding temporary licence shall be allowed to pass the examination within a period of two years from the date of commencement of the New Regulations. The examinations envisaged in Regulations 9 and 8 of the two sets of Regulations are not identical, inasmuch as, under the Old Regulations the applicant was not required to answer questions relating to the Patents Act, 1970, the Copy Rights Act, 1957, Export Promotion Schemes, the Narcotic Drugs and Psychotropic Substances Act, and the Prevention of Corruption Act, 1988, which an applicant is required to pass under the New Regulations. He can also be required to answer questions on the following subject:

"On-line filing of electronic shipping bills or bills of entry and

Indian Customs and Central Excise Electronic Commerce/Electronic Data interchange Gateway (ICEGATE) and Indian Customs Electronic Data Interchange Systems (ICES)."

Under the Old Regulations, an applicant was not required to answer questions on the aforementioned topic. It can, thus, be said that the scheme of examination of the New Regulations is different from the Old Regulations. While prescribing additional topics and enactments in the scheme of examinations under the New Regulations, the Regulation- making Authority must have taken into consideration the advancement made in the field of Information and Technology and legislations relating to Intellectual Property. Therefore, it has been specifically mentioned that the applicant's knowledge can be decided with reference to the Patents Act, 1970, the Copy Right Act, 1857, on-line filing of electronic shipping bills etc. The export promotion schemes framed by the government keeping in view the liberalization of economy have also acquired great significance. Therefore, a provision has been made that the applicant must be well conversant with the export promotion schemes.

If the petitioner's claim is considered in the backdrop of the scheme of the New Regulations with particular reference to the non-obstante clause contained in Regulation 8(5) and the additional subjects/enactments with reference to which questions could be put to the applicant, it is not possible to accept the argument of Ms.M.Vidyavathi that the rejection of application made by M/s.Portlinks for grant of regular licence is legally untenable. In our considered view, passing of the examination in terms of Regulation 8 of the New Regulations is a condition precedent for

grant of licence under Regulation 9 and the petitioner, who has not passed the examination, cannot contend that the decision taken by respondent No.2 is arbitrary.

It is also significant to note that the New Regulations do not provide for conversion of temporary licence into regular one as was the situation obtaining under the Old Regulations. Therefore, the Court cannot direct respondent No.2 to accept the application made on behalf of M/s.Portlinks for conversion of temporary licence into regular one.

In view of the above conclusion, we do not consider it necessary to deal with the ambit and scope of clarification given by the Board vide Circular dated 10-6-2004.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

November 03, 2006

svs